HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Misc. Appl. No. 1071 of 2001

Date of Decision: 4th March, 2006

Not approved for reporting.

Date Initial of Judge.

Note: Bench Reader will attach this at the top of firs page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Misc. Appl. No. 1071 of 2001
(Old No. 1127 of 1996)

Smt. Madhu Kapoor
W/o Raj Kapoor
R/o Mausam Bag, Sitapur Road
Police Station- Aliganj, Lucknow ……Applicant

Versus

1. State of Uttaranchal
2. Sudarshan Kumar Kapoor
   S/o Sri Kalyan Chandra Kapoor
   R/o Kashipur (Bajpur Road)
   Police Station – Kashipur
   District –Nainital ….Opp. Parties

Sri Arun Mohan Sakalani, learned counsel for the applicant
Sri A.Rab, Addl. G.A. for the State

Ho'ble J.C.S. Rawat, J.

This petition u/s 482 Cr. P.C. has been filed to quash the proceedings in case No. 2657 of 1993 u/s 419/420 I.P.C. pending before the court of Addl. Chief Judicial Magistrate, Kashipur, District Nainital.

None is appearing for the respondent No. 2 inspite of the service.

Brief facts for the disposal of this petition are that a complaint was filed against the applicant and her husband by Sudarshan Kumar Kapoor-respondent No. 2 on 11.10.1993. It was alleged therein that the husband of the applicant had given a cheque on 08.12.1990 and when the said cheque was submitted before the bank, the said cheque was bounced. Thereafter, on 07.01.1991 the accused had given a cheque having the signature of Madhu Kapoor as the Director of Hindan Pharma and the Said cheque was also bounced. Thereafter the present complaint was filed.

The statement u/s 200 and 2002 Cr.P.C. were recorded and thereafter the accused was summoned u/s 419 and 420 I.P.C.

Feeling aggrieved by the complaint and impugned order, the present petition has been filed.

It is pertinent to mention here that at the time when the complaint was filed there was no penal provisions u/s 138 N.I.Act. Learned counsel for the petitioner contended that the husband of the applicant had already paid all the dues to the complainant and as such, he stopped dealing with the complaint. It was further contended that the complainant had taken the money in cash and thereafter he filled this complaint only to harass the applicant. It was further contended that the present complaint is not maintainable before the Magistrate as this is a civil matter. The applicant had the remedy to file the civil suit. The perusal of the record reveals that the accused No. 1 Raj Kapoor had given a cheque to the respondent No. 2-complainant on 08.12.1990 and it was bounced. Thereafter, the present cheque was delivered by the 2 and the said cheque was also bounced. Thus the act of the applicant clearly reveals that the intention of the accused was to cheat the complainant. It is further clearly revealed from the record that the said cheque was bounced and there was no sufficient fund on his account. The applicant has taken a plea that he has already paid the amount for which the cheque was issued. The complainant has sufficiently proved at this stage by adducing the evidence that there is a prima-facie case as has been narrated in the complaint. The applicant/ accused has taken a plea which can only be substantiated by the evidence. As a matter of fact this is the plea of the defence which can be taken at the time of the trial. The court has to see as to

whether the version which has been narrated by the complainant, is correct on the version of the accused is correct. Thus, it is a disputed question of fact and it cannot be decided by this court under the proceedings u/s 482 Cr.P.C.

The power of this Court under section 482 Cr.P.C. is very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to quash the same in exercise of the inherent powers under section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case by the Magistrate to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this court. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. **{See State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR P/151}.**

It has been held in **M. Narayandas Vs. State of Karnataka 2004 Cri. L.J p/822** that it is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire

whether the allegations in the compliant are likely to be established or not.

It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

In view of the above discussion, I am of the view that the petition devoids of merit and is liable to be dismissed. Accordingly, the same dismissed.

The parties are directed to be present before the court below on 31.03.2006.

(J.C.S. RAWAT,J.)

4th March, 2006
Shiv